

**Minutes
City Council/Public Financing Authority Special Meeting
City of Huntington Beach**

Monday, September 24, 2012
5:00 PM - Council Chambers
Civic Center, 2000 Main Street
Huntington Beach, California 92648

**A video recording of the 5:00 PM portion of this meeting
is on file in the Office of the City Clerk and are archived at
www.surfcity-hb.org/government/agendas/**

CALL TO ORDER - 5:07 PM

ROLL CALL

Present: Shaw, Harper, Dwyer, Hansen, Carchio, Bohr, and Boardman
Absent: None

PUBLIC COMMENTS PERTAINING TO SPECIAL MEETING CLOSED SESSION ITEM(S) (3 Minute Time Limit) - **NONE - NOT HELD**

CLOSED SESSION - **NOT HELD**

~~Pursuant to Government Code Section 54957.6, the City Council shall recess to Closed Session to meet with its designated labor negotiators: Fred Wilson, City Manager; Paul Emery, Deputy City Manager; Bob Hall, Deputy City Manager; Michele Warren, Director of Human Resources; and Lori Ann Farrell, Director of Finance, regarding labor negotiations with MEO (Management Employees Organization).~~

PLEDGE OF ALLEGIANCE - Led by Mayor Hansen

ANNOUNCEMENT OF SUPPLEMENTAL COMMUNICATIONS (Received After Agenda Distribution)

Pursuant to the Brown "Open Meetings" Act, City Clerk Joan Flynn announced supplemental communication received by her office following distribution of the City Council agenda packet:

Communication submitted for Councilmember Item No. 3 by Mary Urashima dated September 24, 2012, and entitled Outsourcing the City Attorney Office.

PUBLIC COMMENTS (3 Minute Time Limit)

(The number (hh:mm:ss) following the speakers' comments indicates the approximate starting time in the archived video located at <http://www.surfcity-hb.org/government/agendas/>).

John Earl spoke in favor of Councilmember Item No. 3 - Request to Receive and File RFQs to Outsource the City Attorney's Office. (00:04:50)

Debbie Cook spoke in support of Consent Item No. 2 - Ordinance No. 3959 Amending Chapter 2.76 of the Huntington Beach Municipal Code to add Chief Assistant City Attorney, and in support of Councilmember Item No. 3 - Request to Receive and File RFQs to Outsource the City Attorney's Office. (00:07:10)

Tim Geddes spoke in favor of Councilmember Item No. 3 - Request to Receive and File RFQs to Outsource the City Attorney's Office. (00:09:43)

COUNCIL COMMITTEE - APPOINTMENTS - LIAISON REPORTS AND ALL AB 1234 DISCLOSURE REPORTING

Councilmember Joe Shaw announced the appointment of Robert Franklin as Planning Commissioner.

PUBLIC HEARING

1. Public Hearing Held - Adopted Resolution No. 2012-65 to adopt a Budget for the City for Fiscal Year 2012/2013 (Continued from the September 17, 2012 meeting)

City Manager Fred Wilson introduced Budget Manager Carol Molina Espinosa who presented a PowerPoint entitled *City of Huntington Beach Proposed Budget - Fiscal Year 2012/2013*, with titled slides: A Roadmap to Success - The Strategic Plan, FY 2012/13 Proposed Budget, FY 2012/13 General Fund Budget, Improve Long-Term Sustainability, Improve the City's Infrastructure, Enhance Economic Development, FY 2012/13 Budget Accomplishments, and Questions.

Travis Hopkins, Director of Public Works, presented a PowerPoint entitled *FY 2012/2013 Capital Improvement Program*, with titled slides: Capital Improvement Program (CIP), New Appropriations, CIP Projects by Category, CIP Projects by Funding Source, New Projects \$22.2M, Continuing Appropriations, Continuing Projects \$14.7M, and Questions.

Mayor Hansen opened the public hearing.

Heather Dillard voiced concerns about proposed cuts to public safety such as minimal staffing levels (similar to what was in place in the 1970s) and discontinuing traffic accident reporting. She stated her opinion that savings in other budget areas should be funneled into Public Safety. (00:22:30)

With no one else present to speak, the public hearing was closed.

Mayor Hansen and Manager Wilson discussed findings for outsourcing of legal services, including number of responses received, number of firms interviewed, the firm recommended for selection, and the projected savings.

Elizabeth Hall, legal counsel with Best Best & Krieger LLP, spoke regarding projected cost savings and types of services typically outsourced to other firms.

Mayor Hansen and Deputy City Manager Bob Hall discussed the research involved in firm selection, the City's expectations, and confidence in the proposal submitted.

Councilmember Boardman voiced concerns about the legality of the discussion, reminding Council of her agenda item to receive and file the RFQs and not take action to outsource legal services. She was also concerned about further discussion being unconstitutional or in violation of the City Charter.

Councilmember Boardman voiced concerns about types of cases that would garner a \$265/hour fee, and Manager Wilson discussed challenges in determining costs for certain legal services and how the City Attorney elected not to participate in review of RFQ material.

Special Counsel Irma Rodriguez Moisa spoke to the legality of holding discussion on the issue in a public forum, suggesting that Council vote to waive attorney/client privilege if they wanted to continue the discussion.

A motion was made by Boardman, second Shaw to waive the attorney/client privilege to allow discussion with independent attorney Irma Rodriguez Moisa about the City's proposal to outsource legal services. The motion carried by the following roll call vote:

AYES: Shaw, Dwyer, Carchio, and Boardman
NOES: Harper, Hansen, and Bohr

In response to Councilmember Boardman's inquiry about the legality/constitutionality of the City outsourcing legal services, Attorney Moisa made the following points:

Is the decision to outsource legal services a budgetary, legislative decision within or outside of its authority?

Is the budget process being infringed upon for another purpose?

Does the decision to outsource impair the City Attorney's ability to perform her duties?

Is the decision being used in an attempt to control the manner in which City Attorney performs her duties?

Is Council trying to manage City Attorney staff?

What will the City Attorney's role be?

How much control will the City Attorney have?

Based on the factors mentioned above, Ms. Moisa stated her opinion that a court of appeals would likely reverse a decision to outsource, finding that the City is outside of its budgetary, constitutional authority.

Councilmember Boardman stated her opinion that the decision to outsource does not comply with the City's Charter, and made reference to past audits of the City Attorney by Management Partners that appeared favorable, and which described the City Attorney's department as lean.

Councilmember Bohr inquired, and Attorney Moisa confirmed that discussion on the topic alone does not violate the City Charter.

Councilmember Shaw and Attorney Moisa discussed email documents that imply budgetary decisions did not drive the decision to outsource.

Mayor Pro Tem Dwyer explained that budget decisions are made based on the information submitted, but was also aware that uncertainties can always appear.

Councilmember Carchio and Attorney Moisa discussed the potential for litigation. Attorney Moisa described circumstances related to challenging constitutionality, ignoring obligations to meet and confer prior to employee layoffs, and preliminary injunction, something she described as irreparable damage. Councilmember Carchio voiced concerns about incurred legal fees wiping out any potential for savings.

Councilmember Boardman and Attorney Moisa discussed PERB and good faith bargaining. Attorney Moisa provided thoughts on how bargaining units will respond to certain decisions (management rights provision, unfair labor practice, meet and confer, fact-finding, mediation, impasse) that will cause a lengthy delay in resolving the issue.

Councilmember Bohr voiced concerns about exhausting time and money. He also voiced support to adopt a Chief Deputy Attorney position.

Mayor Pro Tem Dwyer thanked Attorney Moisa, and questioned if outsourcing legal services made sense at this time.

Mayor Hansen expressed concerns about losing money on litigation that could be spent to fund two Police Officer positions.

A motion was made by Hansen, second Harper to adopt the budget as presented, and transfer the \$150,000 cost savings noted if outsourcing had taken place from the City Attorney's to Police Department's budget.

Councilmember Boardman voiced concerns about bidders knowing what the City Attorney budget was before submitting reports, and how it affected their cost savings estimates. She also voiced opposition to moving money arbitrarily from one department to another, and asked that Council consider utilizing surplus funds to cover costs for Police Patrol Officers.

A substitute motion was made by Boardman, second Shaw to amend the Financial Policy to allow Council to utilize reserves up to \$350,000 (if needed) to fund proposed public safety cuts (2 Police Patrol Officers for one year), and adopt the Proposed Fiscal Year 2012/2013 City Budget appropriation of \$294,654,838 as outlined in the Proposed Budget document and all revisions contained in the Exhibits of the Budget Resolution; and, adopt Resolution Number 2012-65, "A Resolution of the City Council of the City of Huntington Beach Adopting a Budget for the City for Fiscal Year 2012/2013;" and, authorize the Professional Services included in the Fiscal Year 2012/2013 budget to be representative of the services projected to be utilized by departments in Fiscal Year 2012/2013; and, accept revisions to the Proposed Budget Document received by City Council on July 16, 2012, provided in the report.

Councilmember Carchio and City Attorney McGrath discussed the potential loss of one position in the City Attorney's Office to produce a cost savings of \$150,000. Councilmember Carchio explained why he would not be supporting outsourcing the City Attorney's office.

Mayor Pro Tem Dwyer disclosed he was the individual who contacted Chief Small to take a traffic report when his wife was involved in a recent car accident. He also explained why he would not be supporting outsourcing the City Attorney's office.

Councilmember Boardman recognized staff's communication of cuts should Measure Z be approved.

Mayor Hansen described the cuts outlined as fictional, and stated his opinion that subsidizing pensions can resolve the economic challenges being experienced now.

Councilmember Harper discussed the ill state of the economy.

Councilmember Bohr questioned the reserve fund balance of \$23 million, and provided support for Councilmember Boardman's substitute motion.

Mayor Pro Tem Dwyer and Manager Wilson discussed the hiring freeze in place and how AB 340 applies after the first of the year. Chief Small explained that the amount needed to save two Patrol Officers is closer to \$175,000 because if able to recruit, action on the two positions would not likely take place until mid year.

The motion carried by the following roll call vote:

AYES: Shaw, Carchio, Bohr, and Boardman
NOES: Harper, Dwyer, and Hansen

ORDINANCES FOR INTRODUCTION

2. Approved for introduction Ordinance No. 3959 amending Chapter 2.76 of the Huntington Beach Municipal Code (HBMC) to add Chief Assistant City Attorney Continued from the September 17, 2012 meeting

City Attorney Jennifer McGrath and Councilmember Bohr had a brief discussion that provided support to add an at-will Chief Assistant City Attorney.

A motion was made by Bohr, second Carchio to approve for introduction Ordinance No. 3959, "An Ordinance of the City of Huntington Beach Amending Chapter 2.76 of the Huntington Beach Municipal Code Relating to Competitive Service Regulations." The motion carried by the following roll call vote:

AYES: Shaw, Harper, Dwyer, Hansen, Carchio, Bohr, and Boardman
NOES: None

COUNCILMEMBER ITEMS

3. Item Submitted by Councilmember Boardman Failed - Outsourcing of the City Attorney's Office Continued from the September 17, 2012 meeting

Councilmember Boardman described her concerns about violating the Charter, and requested that Council take action on her request to receive and file RFP responses for City Attorney services.

A motion was made by Boardman, second Shaw to receive and file the RFQ responses for City Attorney services that were received on August 31, 2012. The motion failed by the following roll call vote:

AYES: Shaw, and Boardman
NOES: Harper, Dwyer, Hansen, Carchio, and Bohr

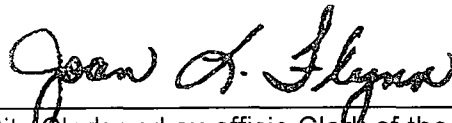
COUNCILMEMBER COMMENTS (Not Agendized)

Mayor Pro Tem Dwyer reported attending the Art Center's "the Cylinder, the Sphere, the Cone" exhibit.

Councilmembers Harper and Carchio congratulated IMG for a successful Jose Cuervo beach volleyball tournament.

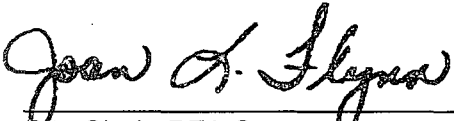
Councilmembers Boardman, Dwyer and Shaw offered well wishes to Downtown Art Curator Darlene D'Angelo.

ADJOURNMENT at 6:45 PM to the next regularly scheduled meeting of Monday, October 1, 2012, at 4:00 PM in Room B-8, Civic Center, 2000 Main Street, Huntington Beach, California.

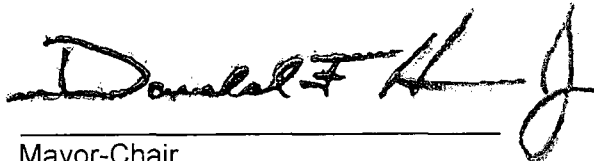


City Clerk and ex-officio Clerk of the
City Council, Secretary of the Huntington
Beach Public Finance Authority of the City of
Huntington Beach, California

ATTEST:



City Clerk, PFA Secretary



Mayor-Chair